IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

W.A.No.2657 of 2007

AGAINST THE JUDGEMENT IN W.P.(C).NO.30587/2007(N) DATED 16/10/2007

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APPELLANT: PETITIONER:-

G.O.JACOB,
PROPRIETOR, JOSE COFFEE WORKS,
CHOWARA ROAD,
KALADY.P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.BOBBY JOHN
SRI.P.N.D. NAMBOOTHIRI

RESPONDENTS: RESPONDENTS:-

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1. THE COMMERCIAL TAX OFFICER,
   ANGAMALY

2. THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES,
   ERNAKULAM.

3. THE INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES,
   MATTANCHERRY,
   COCHIN-2

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu,C.J. & K.M.Joseph,J.

W.A.No.2657 of 2007

Dated, this the 12th day of November, 2007

JUDGMENT

H.L.Dattu,C.J.

Against an interim order passed by the first appellate authority in the appeal filed by the assessee, petitioner was before this Court in the writ petition.

(2) The learned Single Judge has rejected the writ petition solely on the ground that it may not be proper for him to interfere with the discretionary orders passed by the first appellate authority.

(3) Aggrieved by the said order, the petitioner is before us in this appeal.

(4) An order of assessment is passed against the assessee. Aggrieved by that order, the assessee has questioned the same before the first appellate authority. Along with the appeal, an application for the grant of interim relief was also filed. The appellate authority after considering the application so filed by the appellant, has directed the appellant to deposit 50% of the tax demanded. This is a discretionary order passed by the first appellate authority. Interference with the said order is called for, only if the said order is arbitrary, capricious or whimsical. None of the ingredients narrated by us is forthcoming in this matter. Therefore, in our opinion, the learned Single Judge was justified in rejecting the writ petition at the preliminary hearing stage itself. Therefore, interference with the said order is not called for and the Writ Appeal requires to be rejected and it is rejected.

(5) Appellant is granted another fifteen days time from today to comply with the orders passed by the first appellate authority.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.M.Joseph
Judge

vku/-